IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1092 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any O-2

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5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1092 of 1991

MRS KETTY A MEHTA for Petitioner No. 1-10

MR PR ABICHANDANI, ASSTT. GOVERNMENT PLEADER for Respondent No. 1AN , ASSTT. GOVERNMENT PLEADER for Respondent No. 1ANI, ASSTT. GOVERNMENT PLEADER for Respondent No. 1ANI, ASSTT. GOVERNMENT PLEADER for Respondent No. 1ANI, AS TT. GOVERNMENT PLEADER for Respondent No. 1ANI, ASSTT. GOVERNMENT PLEADER for espondent No. 1ANI, ASSTT. GOVERNMENT PLEADER for Respondent No. 1ANI, ASSTT. OVERNMENT PLEADER for Respondent No. 1ANI, ASSTT. GOVERNMENT PLEADER for Respo dent No. 1ANI, ASSTT. GOVERNMENT PLEADER for Respondent No. 1ANI, ASSTT. GOVER MENT PLEADER for Respondent No. 1ANI, ASSTT. GOVERNMENT PLEADER for Respondent No. 1ANI, ASSTT. GOVERNMENT PLEADER for Respondent No. 1ANI, ASSTT. GOVERNMENT PLEADER for Respondent No. 1ANI, ASSTT. GOVERNMENT PLEADER for Respondent No.

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NOTICE SERVED for Respondent No. 3-7

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 10/07/2003

ORAL JUDGEMENT

The petitioners have challenged the provisions contained in the Recruitment Rules for Taluka Development Officers, Block Development Officers and/or District Development Officers and the Taluka Development Officers (Gujarat Development Service Class-II) Recruitment Rules, 1990 and have sought following reliefs:-

(A) By a writ of mandamus and/or in the nature of mandamus and/or any other appropriate writ, order or direction respondents herein be directed to operate select list prepared in March, 1990 for promotion to the various posts in Gujarat Development Service, Class II and be further directed to fill in vacancies for which the selection procedure is completed in accordance with law;

(B) That pending hearing and final disposal of the writ petition, respondents herein be directed not to withhold the Select List already prepared in March, 1990 on irrelevant criteria for the purpose of promotion to the post in Gujarat Development Service Class II and be further directed to fill in vacancies which were available in March, 1990 for which the petitioners and others were duly selected;

The case of the petitioners is that they belong to Class III cadres of the Panchayat Service of the State of Gujarat and at present they are working in various District Panchayats in Class II post of Head Clerk, Deputy Chitnes, Taluka Panchayat Officer, Research Assistant, Accountant etc. and the Gujarat Development Service Lower Standard and Higher Standard Examination Rules, 1979 governed their service by virtue of which they were qualified and eligible for appointment to the promotional post in the Gujarat Development Service

Class-II, which is a State cadre. However, the said Rules came to be amended by Government Notification of the Panchayat Service of Health Department dated 29th July, 1971, and according to the said Recruitment Rules of 1965, as amended in 1971, the appointment to the post in the Gujarat Development Service Class II was to be made by promotion from the categories of Extension Officers, Mukhya Sevikas, Statistical Assistants, Head Clerks, Awal Karkoon, Senior Clerk, Senior Accounts Clerk and persons holding post in pay-scale equivalent to or higher than such posts mentioned above. The petitioners are aggrieved by the fact that they were working on the said various posts mentioned in the Recruitment Rules and were entitled to promotion in Gujarat Development Service, Class II, which has been taken away by the amendment and hence, this petition.

2. An affidavit-in-reply sworn by Mr. J.M.Christian, Under Secretary to the Government of Gujarat, Panchayats and Rural Housing Department is filed contesting this petition.

3. Heard learned Counsel Ms. K.A.Mehta for the petitioners and learned Assistant Government Pleader Mr. P.R.Abichandani for the respondents. Ms. Mehta submitted that identical petitions came to be considered by this Court and came to be disposed of on 26.6.1997 and she placed on record a copy of the said judgement and submitted that this petition may also be disposed of with like directions. This proposition is not disputed by learned AGP. The new Rules were admitted to be prospective by the learned AGP Mr. S.R. Divetia, appearing for the State in that matter. Obviously, the post of Gujarat Development Service Class II which were available for promotion immediately prior to the date of coming into force of the amended Rules of 1990 are required to be filled in, in accordance with the old Rules and subsequently, the new Rules would prevail. The new Rules came into force on 27th September, 1990. The petition therefore deserves to be allowed in part. The petition is therefore allowed in part. It is hereby declared that all the posts of Gujarat Development Services Class II which were available for recruitment on 26th Sept. 1990 and prior thereto, shall be filled in, in accordance with the old Rules. The new Rules of 1990 shall be applicable only for filling up the posts of Gujarat Development Service Class II, which come into existence on or subsequent to 27th Sept. 1990. Rule is made absolute accordingly. Petition stands disposed of with no order as to costs.

(A.L.Dave, J.)

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